

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 7/09/03 Item 3.b.

File Number
CP03-031

Application Type
Conditional Use Permit

Council District
3

Planning Area
Central

Assessor's Parcel Number(s)
467-42-080

STAFF REPORT

PROJECT DESCRIPTION

Completed by: John Davidson

Location: West side of S. Eleventh Street, approximately 120 feet south of E. San Antonio Street (211 S. Eleventh Street)

Gross Acreage: 0.53

Net Acreage: 0.53

Net Density: 38 DU/AC

Existing Zoning: R-M Residence

Existing Use: Vacant fraternity building

Proposed Zoning: No change

Proposed Use: 62-bed (31 room) fraternity

GENERAL PLAN

Completed by: JED

Land Use/Transportation Diagram Designation
Medium High Density Residential (12-25 DU/AC)

Project Conformance:
☒ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: JED

North: Fraternity

R-M Multiple Residence

East: Apartments

R-M Multiple Residence

South: Fraternity

R-M Multiple Residence

West: Fraternity

R-M Multiple Residence

ENVIRONMENTAL STATUS

Completed by: JED

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: JED

Annexation Title: Original City

Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____

Approved by: _____
☐ Action
☒ Recommendation

OWNER/ APPLICANT

Green Valley Corporation
777 N. First Street, Fifth Floor
San José, CA 95112

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: JED

Department of Public Works, Fire Department

See Conditions of Approval

Other Departments and Agencies

See Conditions of Approval

GENERAL CORRESPONDENCE

Letter from Ken Podgorsek, Campus Community Association, dated June 3, 2003

ANALYSIS AND RECOMMENDATIONS

BACKGROUND**Project Description**

The applicant is requesting a Conditional Use Permit for a 62-bed fraternity in the vicinity of San José State University. Since 1959, fraternities and sororities require a Conditional Use Permit in the R-M Residence Zoning District. Although this building was constructed prior to the requirement for a Conditional Use Permit for fraternities, the use has been discontinued for more than 18 months, since 1999, and the site has lost its legal non-conforming status. Therefore, the new tenants are required to obtain a Conditional Use Permit.

The 0.53-acre site is developed with a three-story, 15,800 square foot fraternity building, constructed in 1960, and has been vacant since 1999. On the ground floor, there are a number of common rooms and offices, and two bedrooms. The second level features eighteen bedrooms, a laundry room and two dormitory-style bathrooms. The third floor contains eleven bedrooms and two dormitory-style bathrooms. A total of 34 parking spaces are provided on site. Surrounding land uses include fraternities to the north, south and west, and apartments to the west.

GENERAL PLAN CONFORMANCE

Fraternities and sororities are a land use allowed in the Medium High Density Residential (12-25 DU/AC) land use designation. General Plan policy specifies that uses of this type should be located in residential designations that allow eight or more dwelling units per acre. The property was developed at a density of 37 DU/AC in 1960, and previously occupied at densities of up to 38 DU/AC. This application is in line with those previous densities. Furthermore, the site is less than two acres in size and was developed with a structure at the higher density equivalency. The General Plan deems such an existing circumstance also to be consistent with the land use designation.

ENVIRONMENTAL REVIEW

The project was found to be exempt from environmental review under Section 15301 of the CEQA Guidelines, which exempts existing facilities for which little or no expansion in use is proposed. The project will not have a significant impact on the environment.

ANALYSIS

The primary issues for this project are the number of residents proposed on site, parking, and compatibility with surrounding uses, and appropriate conditions of approval for this use.

Number of Residents

The applicant is proposing a 62-bed fraternity (31 rooms), in line with the site's previous residential occupancy numbers. The original building permit, approved in 1960, allowed a 60-bed sorority. The most recent residential occupancy permit, issued in 1995, allowed a 31-room, 62-bed dormitory. The applicant is proposing to use the existing floor plan to accommodate the 62 residents, with no increase in the number of sleeping rooms or occupants, and staff is supportive of the proposal. For purposes of this staff report and permit, fraternity and sorority are considered interchangeable.

Parking

A total of 34 parking spaces currently exist on site. The Zoning Code requires that fraternities provide a minimum of one parking space for each room and one space for each staff person. Using this standard, the project as proposed requires 34 parking spaces, and the number of parking space proposed is in conformance with the parking requirements of the Zoning Ordinance.

As shown on the site plan, project parking is located on a separate adjacent parcel from the sorority building. This constitutes an off-site parking arrangement under the Zoning Ordinance. County tax records indicate that the same property owner owns both properties. To insure that parking will be available in the future for fraternity residents, the proposed permit will cover both properties and limit the use of the parking parcel for the exclusive benefit of the fraternity parcel. The property owner will be required to grant a Covenant of Easement to the City across the two properties for ingress, egress, and parking purposes or to combine the lots through a lot line adjustment.

Compatibility with Surrounding Uses

Fraternities and sororities are conditional uses in the R-M Residence Zoning District. Conditional Use Permits allow the City to design and impose appropriate conditions to insure that uses will be compatible with their surroundings. The proposed location, surrounded by the university, other fraternities and sororities, and an apartment building, is generally compatible with this type of use. However, a number of conditions have been included as a part of this Conditional Use Permit, which will allow the facility to appropriately co-exist with the surrounding residential neighborhoods. Permit conditions mandate quiet hours, codes of conduct, restrictions on the use of alcohol on site, and maintaining good standing in relation to San José State University. These conditions of approval have been crafted with input from the University Neighborhoods Coalition, a local neighborhood group.

No major exterior physical changes, apart from routine repair, window replacement, and rehabilitation including fresh exterior paint, are proposed to the site which would change its established design or which might have a deleterious impact on surrounding uses. The applicant is proposing significant upgrade to the landscaping on the site, especially along S. Eleventh Street. With the proposed additional operational conditions, neighboring properties should notice an improvement in the look and management of the facility.

PUBLIC OUTREACH

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has also been available to respond to inquiries from the public. The Campus Community Association did provide written comments that are included with this staff report.

Conclusion

Based on the above analysis, staff concludes that the proposed fraternity (or sorority) in an existing building, as conditioned, provides adequate parking, is an appropriate size for the subject building, and is compatible with the surrounding neighborhood.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding the proposed project.

1. This site has a designation of Medium High Density Residential (12-25 DU/AC) on the adopted San José 2020 General Plan Land Use/ Transportation Diagram.
2. The project site is located in the R-M Residence Zoning District.
3. The project was found to be exempt from environmental review under Section 15301 of the CEQA Guidelines, which exempts existing facilities for which little or no expansion in use is proposed. The project is for the change of use of an existing building. The project will not have a significant impact on the environment.
4. The applicant is requesting this Conditional Use Permit to allow a 62-bed (31 room) fraternity or sorority in the R-M Residence Zoning District
5. The 0.53-acre site, developed with a 3-story, 15,800 square-foot, 31 “bedroom” building built in 1960, is proposed to accommodate up to 62 residents.
6. The site is surrounded by fraternities to the north, south, and west, and an apartment to the east.
7. Fraternities and sororities are a land use allowed in the Medium High Density Residential (12-25 DU/AC) land use designation. General Plan policy specifies that uses of this type should be located in residential designations that allow eight or more dwelling units per acre.
8. The Zoning Code requires that fraternities or sororities provide a minimum of one parking space for each room and one space for each staff person. Using this standard, the project as proposed requires 34 parking spaces, which are provided on site.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project will be consistent with the adopted San José 2020 General Plan Land Use/

Transportation Diagram of the City of San José.

2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed use is compatible with the surrounding neighborhood.

Finally, based upon the above stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons residing or working in the surrounding area; or
 - c. Be detrimental to public health, safety or general welfare.
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highway or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate and; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically*

expiring regardless of any other expiration date contained in this permit. Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "211 S. Eleventh Street", dated April 22, 2003, on file with the Department Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 24).
3. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Residential Occupancy Permit.** The applicant shall obtain a Residential Occupancy Permit from the Code Enforcement Division. No Occupancy Permit shall be issued until the project has been certified in compliance with all applicable building and fire codes and conforms to Condition No. 11 of this permit (below).
5. **Occupancy.** This Conditional Use Permit authorizes the use of the main building as a 62-bed fraternity/sorority, subject to applicable building and fire codes.
6. **University Affiliation.** The fraternity/sorority using the subject site must be recognized by San José State University and in good standing as an affiliated fraternity/sorority.
7. **Peer Review.** The fraternity/sorority using the subject site is required to be members in good standing of an Umbrella Council recognized by San José State University.
8. **Quiet Hours.** The fraternity/sorority is required to maintain quiet hours between 10 p.m. and 8 a.m., Sunday through Thursday, and between 11 p.m. and 8 a.m. Friday and Saturday. During quiet hours, the maximum decibel level allowed, measured at the property line, is 55 dB.
9. **Code of Conduct.** The fraternity/sorority is required to abide by San José State University's Code of Conduct for Student Organizations.

10. **Alcohol.** The consumption and use of alcohol while on fraternity/sorority premises shall be in compliance with applicable laws of the State of California, the City of San José, and any applicable rules proscribed by San José State University.
11. **Lot Combining/Covenant of Easement.** This project resides on Assessor's Parcel Number (APN) 467-42-080 and 467-42-097. As shown on the site plan, project parking is located on a separate adjacent parcel from the fraternity/sorority building. County tax records indicate that the same property owner owns both properties. Prior to issuance of a Residential Occupancy Permit for the building, the applicant shall legally combine the lots or grant a Covenant of Easement to the City across the two properties for ingress, egress, and parking purposes. If the lots are not legally combined, the use of the adjacent parcel shall be parking for the exclusive benefit of the fraternity/sorority.
12. **Fire Flow.** The required fire flow for the site is 3,500 gallons per minute. The needed fire flow shall be provided from a minimum of four hydrants, and shall be spaced on average 350 feet from the proposed project.
13. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping. Garbage and recycling containers must be stored in the designated area at the rear of the site except for 12 hours before and after scheduled pick-ups.
14. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
15. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP03-031, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
16. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
17. **Outdoor Storage.** No outdoor storage is permitted.
18. **Landscaping.** All proposed landscaping shall be installed prior to building occupancy, and shall be supported by an automatic irrigation system.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of

buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

c: Owner
Applicant
Engineering Services